

V I R G I N I A:

BEFORE THE VIRGINIA GAS AND OIL BOARD

PETITIONER:	MICHAEL HAMILTON,	)	
	SURFACE OWNER,	)	
		)	
		)	VIRGINIA GAS
	v.	)	AND OIL BOARD
		)	
		)	
RESPONDENT:	NORA GATHERING, LLC AND	)	
	EQT PRODUCTION COMPANY	)	
	(Permit Applicant)	)	
		)	
		)	
RELIEF SOUGHT:	APPEAL OF DECISION BY THE DIRECTOR	)	DOCKET NO.
	OF THE DIVISION OF GAS AND OIL	)	VGOB-12-
	DATED MARCH 27, 2012, FOLLOWING	)	0514-3067
	INFORMAL FACT FINDING CONFERENCE	)	
	24007 and 24008	)	

REPORT OF THE BOARD

FINDINGS AND ORDER

1. Hearing Date and Place: This matter came on for final hearing before the Virginia Gas and Oil Board (hereafter "Board") at 9:00 a.m. on May 15, 2012 at the Russell County Conference Center, Lebanon, Virginia.

2. Appearances: No one appeared for the Petitioner, Michael Hamilton (surface owner); Jim Kiser, Esq. appeared for the Respondent, Nora Gathering, LLC and EQT Production; and Sharon M. B. Pigeon, Esq., Senior Assistant Attorney General, was present to advise the Board.

3. Jurisdiction and Notice: Pursuant to Va. Code §§ 45.1-361.1 et seq., the Board finds that it has jurisdiction over the subject matter. The Board also finds that the notices given herein satisfy all statutory requirements, Board rule requirements and the minimum standards of due process. After hearing arguments and considering the Directors' decision and evidence presented, upon motion and vote, the Board denied Petitioner's application on appeal, relying on Va. Code §§ 45.1-361.1, 45.1-361.29, 45.1-361.35 and 45.1-361.36.

4. Relief Requested: Petitioner, Michael Hamilton (surface owner), appealed the Director's decision in IFFC 24007 and 24008, requesting:

- I. Michael Hamilton objects to EQT and any contractors working for Nora Gathering LLC and EQT Production Company to come on the property described as real property owned by Johnny Hamilton acquired by land owner May 03, 1931 recorded in Clerk of Dickenson County Virginia containing 10 acres more or less due to royalty of gas and oil rights

and due to land owner rights of property.

**5. The only statutory objections to permit applications available to surface owners are set out at § 45.1-361.35. (B) Objections to permits; hearing.**

1. The operations plan for soil erosion and sediment control is not adequate or not effective;
2. Measures in addition to the requirement for a well's water-protection string are necessary to protect fresh water-bearing strata;
4. Location of the coalbed methane well or coalbed methane well pipeline will unreasonably infringe on the surface owner's use of the surface, provided that a reasonable alternative site is available within the unit, and granting the objection will not materially impair any right contained in an agreement, valid at the time of the objection, between the surface owner and the operator or their predecessors or successors in interest; and

**6. Relief Denied:** The Petitioner's requested relief in this cause is hereby denied:

- a. The Board found that the Petitioner had failed to appear and present any evidence to prove his case. Michael Hamilton's failure to appear and object was uncontradicted by Nora Gathering, LLC and EQT Production Company.
- b. The Board found that the Petitioner had been appropriately provided notice and the opportunity to appear and appeal to the permit application for these permit applications 24007 and 24008.
- c. The Board found that the Respondent had previously presented a title opinion to the Division Director establishing that Petitioner was a surface owner only and did not own royalty in the gas to be produced. Petitioner did not present any evidence to refute the title opinion. Further, the record did not support any of the statutory objections available to a surface owner.
- d. The Board found that the record showed this unit to be a 100% leased voluntary unit not subject to compulsory pooling.

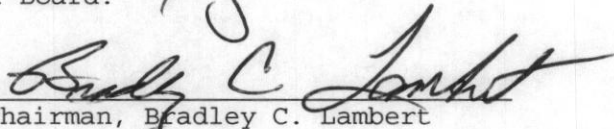
7. **Conclusion:** The decision of the Director of the Division of Gas and Oil dated March 27, 2012 in IFFC 24007 and 24008, and attached hereto are hereby affirmed, and the appeal of Michael Hamilton is denied. The Director of the Division of Gas and Oil is directed to issue the well permits for Application #16086, Gas Well Pipeline VCI-539532 PL and Application #16424, Coalbed Gas Well with Pipeline Modification VCI-531421 with pipeline and IT IS SO ORDERED.

8. **Appeals:** Appeals of this Order may be filed by an adversely affected party within thirty days after service of the Order, pursuant to the provisions of Va. Code Ann. § 45.1-361.9 that provides that any

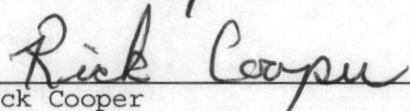
order or decision of the Board may be appealed to the appropriate circuit court where interlocutory relief may also be sought. Any appeal shall be filed in compliance with the provisions of the Administrative Process Act (Va. Code Ann. §§ 2.2-4000 et seq.) and the Rules of the Supreme Court of Virginia.

9. Effective Date: This Order shall be effective as of the date of the Board's decision on May 15 2012.

DONE AND EXECUTED this 31 day of May, 2012, by a majority of the Virginia Gas and Oil Board.

  
Chairman, Bradley C. Lambert

DONE AND PERFORMED this 31 day of May, 2012, by Order of this Board.

  
Rick Cooper  
Principal Executive to the Staff  
Virginia Gas and Oil Board

STATE OF VIRGINIA )  
COUNTY OF ~~LEE~~ Russell )

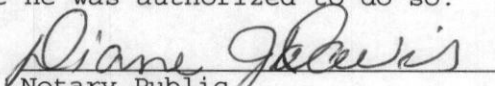
Acknowledged on this 31 day of May, 2012, personally before me a notary public in and for the Commonwealth of Virginia, appeared Bradley C. Lambert, being duly sworn did depose and say that he is Chairman of the Virginia Gas and Oil Board, that he executed the same and that he was authorized to do so.

  
Notary Public

My commission expires: 9/30/13

STATE OF VIRGINIA )  
COUNTY OF ~~WASHINGTON~~ Russell )

Acknowledged on this 31 day of May, 2012, personally before me a notary public in and for the Commonwealth of Virginia, appeared Rick Cooper, being duly sworn did depose and say that he is Principal Executive to the Staff of the Virginia Gas and Oil Board, that he executed the same and that he was authorized to do so.

  
Notary Public

My commission expires: 9/30/13



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Decision of the Director

After thorough research and consideration:

The Director is satisfied the proposed development plans by Nora Gathering, LLC and EQT Production Company is undertaken with the intent of minimal damage to the property and environment.

The Director is satisfied the erosion and sediment control plan meets best practice standards for the construction activities proposed for this site under current law.

The permit detail includes ground water protection strings, planned to protect both ground water sources within 750 feet of the site and below drainage coal seams that may be encountered during the drilling and resource extraction process.

The Director is further satisfied, the location of the well site does not unreasonably infringe on the surface owner's use of the property or development of future house seats.

Permit Applicant testified that they have rights to use Surface Owners' property under a lease with Range Resource and Pine Mountain. The applicant furnished a copy of the title opinion to all parties.

Permit Applicant apparently has rights to use Surface Owners' property to access their mineral estate. If this is in dispute, it must be contested in a court of proper jurisdiction. While it can be argued that any adverse use of property is an infringement, § 45.1-361.35 only allows consideration of *unreasonable infringement*.

According to the Permit Application, approximately 300 feet of pipeline is proposed to be on Surface Owners' property. The pipeline and road are to be constructed in the same right-of-way which minimizes disturbance on the property. The right-of-way runs along the south west corner of the surface owner's property.

The Surface Owners' testimony did not make a sound case for unreasonable infringement. The placement of proposed surface disturbances and the lack of demonstrated infringement on current or planned land use appear to negate invocation of unreasonable infringement.

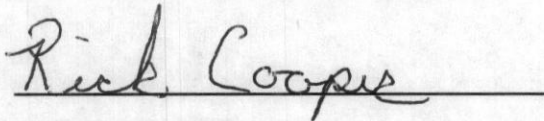
The surface owner provided no testimony or evidence to deny or appeal the applicants claim or testimony

After careful consideration and review of testimony provided, it is the decision of the Director, to rule in favor of the Applicant and to proceed with the review and issuance of the permits for Application # 16086, Gas Well Pipeline VCI-539532 PL

**Right of Appeal**

Any party aggrieved by this decision of the Director may appeal the decision to the Virginia Gas and Oil Board **by filing a petition with the Board within ten (10) days** following the decision (§45.1-361.36). No petition or appeal may raise any matter other than matters raised by the Director or which the petitioner put in issue either by application or by objections, proposals or claims made and specified in writing at the informal fact finding conference.

Signed this 27th day of March, 2012

A handwritten signature in cursive script, reading "Rick Cooper", is written over a horizontal line.

Rick Cooper, Director  
Virginia Division of Gas and Oil